

REMARKS

Claims 1-24 are pending in the Application and all have been rejected in the Office action mailed July 24, 2007. Claims 1, 11, and 19 are independent claims. Claims 2-10, 12-18, and 20-24 depend from independent claims 1, 11, and 19, respectively. The claims 1, 5, 6, and 7 have been amended. No new matter is introduced by the amendments.

The Applicant respectfully requests reconsideration of the pending claims 1-24, in light of the following remarks.

Rejections of Claims

Rejections Under 35 U.S.C. §112

Claims 5 and 6 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action states that the term “efficiently determining” in claims 5 and 6 is a relative term which renders the claim indefinite. Applicant respectfully traverses the rejection.

Nevertheless, in the interests of expediting prosecution, the Applicant has amended claims 5 and 6 to read “determining” by removing the word “efficiently”.

Rejections Under 35 U.S.C. §101

Claims 1-6 were rejected under 35 U.S.C. §101, as being directed to a non-statutory subject matter. The Office Action states that the terms “software” and “firmware” in Claim 1 are software program listings per se and that they do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer, which permit the computer program’s functionality to be realized. Claims 2-6 are dependent on the Claim 1. Applicant respectfully traverses the rejection.

The Office Action suggests that these “rejections can be overcome by adding computer hardware components e.g., memory, and processor into the claims that permit the computer program’s functionality to be realized.”

Nevertheless, in the interests of expediting prosecution, the Applicant has amended claim 1 to read “at least one memory device that stores at least one of a firmware component and a software component.”

Rejections Under 35 U.S.C. §102

Claims 1-24 were rejected under 35 U.S.C. §102(e), as being anticipated by Rao *et al.*, US 7,082,549 B2 (hereinafter Rao). The Applicant respectfully traverses the rejection.

With regard to the anticipation rejections, MPEP 2131 states, “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP 2131 also states, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

MPEP 707(a)(1) states:

On taking up an application for examination or a patent in a reexamination proceeding, the examiner shall make a thorough study thereof and shall make a thorough investigation of the available prior art relating to the subject matter of the claimed invention. The examination shall be complete with respect both to compliance of the application or patent under reexamination with the applicable statutes and rules and to the patentability of the invention as claimed, as well as with respect to matters of form, unless otherwise indicated.

Accordingly, the Applicant assumes that this Office Action is based on a thorough study of the Application.

With regard to claim 1, the Applicant respectfully submits that Rao does not appear to teach or suggest each and every element of the Applicant’s claim 1. For

example, the claim 1 states in part that an update agent is “capable of updating the at least one of a firmware component and a software component employing an update process that comprises a plurality of transform passes.” The Applicant’s specification makes clear that an update process comprises “a plurality of transforms, each transform employing one pass or a portion of one pass to execute, **each pass associated with its own bank order**” Paragraph [0026]. Also see paragraphs [0012], [0013], [0014], [0015], [0023], [0024], [0025], [0027] and [0028].

Rao, on the other hand, discloses a method that “select[s] one of the plurality of banks, duplicating the selected bank to a working bank, copying the selected bank to a backup bank, and converting the contents of the working bank from the first code version to a second code version ... The method may repeat the prior actions until each of the plurality of banks has been updated.” Column 2, lines 22-34 (Brief Summary of the Invention). See also, FIGs. 3-6; column 9, lines 1-7, 47-67; column 10, lines 1-6, 12-21, 32-53. The Applicant respectfully submits that an update process using a “plurality of transforms, each transform employing one pass or a portion of one pass to execute, **each pass associated with its own bank order**” is not the same as a method that “select[s] one of the plurality of banks, duplicating the selected bank to a working bank, copying the selected bank to a backup bank, and converting the contents of the working bank from the first code version to a second code version ... The method may repeat the prior actions until each of the plurality of banks has been updated.”

The Office Action asserts that Fig. 2, step 207-223 and the related text in the specification anticipates “an update agent capable of updating the at least one of a firmware component and a software component employing an update process that comprises a plurality of transform passes.” Page 5. However, as can be seen below, the text describing FIG. 2 does not disclose “an update process that comprises a plurality of transform passes,” where each pass has its own bank order.

FIG. 2 is a flow chart illustrating an exemplary method of startup of a mobile handset such as the mobile handset 107 of FIG. 1, in which a fault tolerant update agent is invoked to conduct firmware/software update operations, in accordance with the present invention. The processing starts when the mobile handset is powered up or rebooted (block 207). Next, the initialization or boot sequence is executed (block 209). A determination is

then made whether an update of the firmware/software of the mobile handset is to be conducted (block 211). For example, in one embodiment, a status table may be accessed to determine if a flag in the status table indicates a need to update firmware/software using an update package previously downloaded and available in the mobile handset.

If it is determined that an update is not necessary, then the regular startup procedure of the mobile handset is executed (block 225) and startup processing terminates (block 221). If, however, it is determined that an update is necessary, then the point where the fault-tolerant update agent should resume the update process is determined (block 213). For example, that point may be at the beginning, for a newly begun update operation, or at a specific bank of non-volatile memory, in the case of a previously initiated but interrupted update operation. Next, the various operations related to the fault-tolerant update process are conducted by the update agent (block 215). Finally, the update agent initiates a reboot of the mobile handset (block 223).

Therefore, the Applicant believes that the claim 1 is allowable over Rao, for at least the reasons set forth above. The Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. §102(e) be withdrawn.

The Applicant respectfully submits that because claims 2-10 depend from allowable independent claim 1, the claims 2-10 are also allowable, for at least the reasons set forth above. Accordingly, the Applicant respectfully requests that the rejection of claims 2-10 under 35 U.S.C. §102(e) be withdrawn.

With regard to claim 11, the Applicant respectfully submits that Rao does not appear to teach or suggest each and every element of the Applicant's claim 11. A portion of claim 11 discloses: "an update agent capable of updating at least a portion of the at least one of firmware and a plurality of software components, the update agent employing an update process that comprises a plurality of transform passes, each transform pass updating a subset of the plurality of memory banks in a predetermined bank order for that transform pass." The Office Action asserts that FIG. 1, item 117 and related text anticipates this portion of the claim 11.

However, the Applicant was not able to find with respect to FIG. 1, item 117, any anticipation of "an update agent capable of updating at least a portion of the at least one

of firmware and a plurality of software components, the update agent employing an update process that comprises a plurality of transform passes, each transform pass updating a subset of the plurality of memory banks in a predetermined bank order for that transform pass.” The Applicant submits that Rao does not anticipate claim 11 for at least these reasons.

Therefore, the Applicant believes that the claim 11 is allowable over Rao, for at least the reasons set forth above. The Applicant respectfully requests that the rejection of claim 11 under 35 U.S.C. §102(e) be withdrawn.

The Applicant respectfully submits that because claims 12-18 depend from allowable independent claim 11, the claims 12-18 are also allowable, for at least the reasons set forth above. Accordingly, the Applicant respectfully requests that the rejection of claims 12-18 under 35 U.S.C. §102(e) be withdrawn.

With regard to claim 19, the Applicant respectfully submits that Rao does not appear to teach or suggest each and every element of the Applicant’s claim 19. For example, a portion of claim 19 discloses “determining as a recovery transform pass, one of the plurality of transform passes interrupted during the update process.” The Office Action asserts that FIG. 6, step 609 and related text anticipates this portion of the claim 19. Step 609 states “Next, the addresses or locations of the working bank and the backup bank are determined (block 609).”

However, as stated previously, the Application discloses “each transform employing one pass or a portion of one pass to execute, **each pass associated with its own bank order**” Paragraph [0026]. Accordingly, the Application is not limited to a single bank at a time.

Therefore, the Applicant respectfully submits that since Rao does not disclose the transform in the Application, where “each transform employ[s] one pass or a portion of one pass to execute, **each pass associated with its own bank order**,” Rao cannot anticipate this portion of claim 19. Paragraph [0026].

Accordingly, for at least the reasons stated above, the Applicant respectfully submits that the claim 19 is allowable over Rao. The Applicant respectfully requests that the rejection of claim 19 under 35 U.S.C. §102(e) be withdrawn.

The Applicant respectfully submits that because claims 20-24 depend from allowable independent claim 19, the claims 20-24 are also allowable, for at least the reasons set forth above. Accordingly, the Applicant respectfully requests that the rejection of claims 20-24 under 35 U.S.C. §102(e) be withdrawn.

Conclusion

In general, the Office Action makes various statements regarding claims 1-24 and the cited reference that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, Applicant expressly reserves the right to challenge such statements in the future should the need arise (e.g., if such statements should become relevant by appearing in a rejection of any current or future claim).

The Applicant believe that all of pending claims 1-24 are in condition for allowance. Should the Examiner disagree or have any questions regarding this submission, the Applicant invites the Examiner to telephone the undersigned at (312) 775-8000.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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